

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Brooks D. Howton,

Case No. 3:19 CV 71

Petitioner,

ORDER ADOPTING
REPORT AND RECOMMENDATION

-vs-

Warden James Haviland,

JUDGE JACK ZOUHARY

Respondent.

Petitioner *pro se* Brooks Howton seeks a Writ of Habeas Corpus under 28 U.S.C. § 2254 (Doc. 1). In May 2016, Petitioner was found guilty by the Allen County, Ohio Court of Common Pleas on one count each of aggravated burglary, kidnapping, felonious assault, and rape (Doc. 10 at 6–7). After unsuccessful state-level appeals (*see id.* at 7–8), Howton filed his Petition before this Court (*see id.* at 7–9), which was automatically referred to Magistrate Judge Kathleen Burke under Local Civil Rule 72.2(b)(2) (Non-Doc. Entry 1/15/2019). Respondent filed a Return of Writ (Doc. 8), and Judge Burke then issued a Report and Recommendation (“R&R”), concluding the Petition should be dismissed in part and denied in part (Doc. 10 at 1). This Court adopts it in its entirety. *See Hill v. Duriron Co.*, 656 F.2d 1208 (6th Cir. 1981).

Although this Court reviews *de novo* any portions of an R&R to which a party timely objects under 28 U.S.C. § 636(b)(1), failure to timely object waives district and appellate court review of the R&R. *See Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995); *United States v. Walters*, 638 F.2d 947, 950 (6th Cir. 1981). This waiver rule has few exceptions. *See Vanwinkle v. United States*, 645 F.3d 365, 371 (6th Cir. 2011); *United States v. 1184 Drycreek*, 174 F.3d 720,

725–26 (6th Cir. 1999). Further, the waiver only applies if the parties are notified that failure to object results in waiver. *See Walters*, 638 F.2d at 950.

The R&R notified the parties that failure to object would result in waiver (Doc. 10 at 20). Neither party has objected, and the deadline for objections has passed. This Court therefore adopts the R&R (Doc. 10) in its entirety. The Petition (Doc. 1) is dismissed. There is no basis upon which to issue a certificate of appealability. *See* 28 U.S.C. § 2253(c)(2). Further, an appeal from this Order could not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3).

IT IS SO ORDERED.

s/ Jack Zouhary
JACK ZOUHARY
U. S. DISTRICT JUDGE

November 21, 2019